

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-12/09-630
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 Appeal of)

The petitioner appeals a decision by the Department for Children and Families, Economic Services Division, leaving her without Three Squares Vermont benefits for the period of November 1, 2009 through November 22, 2009. The issue is whether the petitioner's benefits should have been closed during that period of time.

The decision is based on the evidence adduced at hearing on December 10, 2009. Petitioner testified on her behalf. S.M., a benefits program specialist, testified on behalf of the Department.

1. The petitioner is a sixty-four year old disabled individual. Petitioner is legally blind, diabetic, and has Guillain-Barre syndrome. Due to her diabetes, petitioner needs a specialized diet. Petitioner is a household of one.

2. The petitioner's sole source of income is Social Security Disability benefits in the amount of \$1,261 per month. Petitioner resides in subsidized housing.

3. The petitioner is homebound. She has an aide through the Visiting Nurse Association who helps her on a regular basis by shopping for food, cleaning, and other chores.

4. Petitioner submitted a review application to the department during early July 2009 for both Three Squares Vermont and Medicaid. Petitioner was interviewed by a Department staff member on August 15, 2009. Petitioner testified that she was told that her certification would last one year.

5. The Department sent petitioner a Notice of Decision on August 18, 2009 that she was eligible for Three Squares Vermont in the amount of \$102 per month effective August 1, 2009.

6. On September 29, 2009 and September 30, 2009, the Department generated Interim Report Forms for petitioner to complete. The forms include notice that if information was not received by October 15, 2009 that Three Squares Vermont benefits would end October 31, 2009.

7. S.M. has been a benefits program specialist since April 2009. Petitioner is part of S.M.'s caseload although S.M. did not do the summer 2009 review of petitioner's eligibility. S.M. did not generate the Interim Report Forms.

She does not know why two forms were generated or why the forms would be generated in the first place.

S.M. explained that interim report forms are usually generated in place of a review application and interview. For example, if a household was certified for a one-year period, an interim report would be sent at six months or halfway through the certification period.¹

8. Petitioner testified that she did not receive the Interim Report Forms.

9. On October 22, 2009, the Department generated a Notice of Decision that petitioner's Three Squares Vermont benefits would end on October 31, 2009 due to failure to return the Interim Report Form. October 31, 2009 fell on a Saturday.

10. S.M. testified that she did not look at the decision to close petitioner's benefits in light of the recertification of petitioner's benefits on August 18, 2009.

11. Petitioner testified that she did not receive the October 22, 2009 notice.

¹Households like petitioner's household in which income comes from the Social Security Administration are being switched from a one-year certification period with a six-month request for information to a two-year certification period with a one-year request for information. Petitioner is still on a one-year certification cycle.

12. Petitioner was unaware that her Three Squares Vermont benefits had been closed until she sent her VNA aide grocery shopping on or about November 2, 2009 and learned that she had a zero balance in her Three Squares Vermont account. Petitioner testified that she had no idea what was going on and was upset because her aide could not buy food for her.

13. Petitioner testified that there are one hundred apartments in her building and that mail is sometimes incorrectly sorted. Petitioner's testimony that she did not receive the Interim Report Forms or the October 22, 2009 Notice of Decision is credible.

14. Petitioner testified that she telephoned S.M. on Monday, November 2, 2009 because she wanted her Three Squares Vermont. Petitioner testified that she left voice-mail after hearing a message that S.M. had forty-eight hours in which to return the telephone call. S.M. testified that she did not have a notation of this message in her telephone records but that she did not know whether the petitioner used the call center the Department has recently instituted.

15. Petitioner testified that she telephoned S.M.'s supervisor on November 4, 2009 because her call had not yet been returned.

16. Petitioner and S.M. spoke on November 4, 2009. S.M. did not take action to see if petitioner's financial information had changed, to reinstate petitioner's benefits, or to consider whether the petitioner's desire for her benefits should be considered a request for fair hearing on the closure of petitioner's benefits. Instead, a new application was sent to petitioner. Petitioner's benefits were reinstated effective November 23, 2009 leaving a gap in benefits from November 1 through 22, 2009.

ORDER

The Department's decision is reversed.

REASONS

The Food Stamp program (Three Squares Vermont) was created to combat hunger and malnutrition affecting low-income households. Food Stamp Manual (FSM) § 271.1. Due to the complexity of the program, eligibility benefits specialists have a responsibility to help applicants and recipients navigate the system. 7 C.F.R. § 272.5(b)(2).

Once a household is found eligible, the household will be recertified on a regular basis to ensure continuing eligibility and to update calculations of the benefit amount. FSM § 273.14.

Petitioner is a disabled and elderly person. Her sole source of income is Social Security Disability benefits. Petitioner belongs to the group who are typically recertified on an annual or bi-annual basis. Petitioner went through a recertification during the summer of 2009; she was under the impression that her next recertification would occur during the summer of 2010.

There is no explanation why the Department would generate one Interim Report form, let alone two of these forms. Petitioner's testimony that she did not receive these forms or the subsequent Notice to terminate her benefits is credible. Even if, for the sake of argument petitioner had received these forms, the generation of these reports and the subsequent Notice of Decision should have been opportunities for the Department to review their actions in light of the certification decision from August 18, 2009. Petitioner's underlying information remained the same. At all times, petitioner met the eligibility criteria for Three Squares Vermont as an elderly, disabled Vermonter on a fixed income.

Petitioner was surprised and upset when her VNA aide found there were no Three Squares Vermont benefits in petitioner's account on November 2, 2009. Petitioner's

testimony that she tried to reach S.M. that same day is credible.²

The Department was given the opportunity to review petitioner's case when petitioner and her eligibility specialist spoke. This did not happen; instead, the Department continued to take adverse action against petitioner.

When the Department takes action to close or reduce benefits, the Department must give ten days advance written notice to the household. The ten days starts on the day the Notice is mailed. A household has ninety days in which to request a fair hearing. In addition, if a household requests action prior to the operative date of the Notice or within ten days from the date the Notice is sent, the household should receive continuing benefits pending resolution of their case. When the tenth day falls on a weekend, the time period is extended to that Monday. FSM § 273.13. The request for fair hearing gives the Department the opportunity to review its action and to either reverse its decision, modify its decision, or go to hearing.

² It should be noted that the Department is in the midst of changing their system so that telephone calls from recipients and applicants are routed through a call center.

Assuming the Notice to close benefits was sent on October 22, 2009, the operative date for continuing benefits was Monday, November 2, 2009. Petitioner's telephone message on Monday, November 2, 2009 should have been sufficient notice to the Department that she disagreed with the decision triggering a fair hearing request and continuing benefits.

At the very least, petitioner's conversation with S.M. on November 4, 2009 should have been sufficient to trigger a request for fair hearing. The words "fair hearing" are not necessary to trigger a request for hearing; it is only necessary that the individual state they disagree with Departmental action. This is especially important in this case due to petitioner's credible testimony that she did not receive the Interim Report Forms or the Notice of Decision to close her benefits and due to petitioner's need to maintain her diet in light of her medical condition. Without notice, petitioner cannot be held to have failed to comply with verification requests.

More importantly, the November 4, 2009 conversation could have been used to verify that the information used for the August 18, 2009 Notice remained the same and to reactivate petitioner's benefits. This conversation gave the

Department another opportunity to analyze what the proper response should be in this case.

Based on the foregoing, the Department's decision is reversed and petitioner's Three Squares Vermont reinstated for the period of November 1 through 22, 2009. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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